IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9524 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.K.TRIVEDI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HABIB @ BAPUDI ELIYAS SHAIKH

Versus

DISTRICT MAGISTRATE

Appearance:

MR NIGAM R SHUKLA for Petitioner

MR KT DAVE ASSTT GOVT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.K.TRIVEDI

Date of decision: 21/02/2000

ORAL JUDGEMENT

#. Leave granted to the petitioner to tender on record the statement of anonymous witnesses.

#. Heard Mr. Nigam Shukla, learned advocate for the petitioner and Mr.K.T.Dave, learned AGP appearing for

respondents No. 1,2 & 3.

#. The detention order dated 31-5-1999 passed by respondent No. 1 - The District Magistrate, Jamnagar against the petitioner in exercise of powers conferred under Section 3(1) of the Gujarat Prevention of Anti Social Activities Act 1985 (`PASA' for short') is challenged by way of this present proceedings under Article 226 of the Constitution of India.

#. That the grounds of detention served and supplied to the detenu under Section 9(1) of the PASA, a copy of which is produced at Annexure-B interalia indicate that in all 12 prohibition cases have been registered against the petitioner in between 6-2-1998 to 17-5-1999 which are for the offences made punishable under Bombay Prohibition Act. That country made liquor was seized from the possession of the petitioner / detenu. That 10 cases are pending for trial in the Court, while last 2 cases are pending for further investigation.

Over and above, that four witnesses on assurance of their anonymity have given statement against the bootlegging activities of the petitioner. Tow of the witnesses have given their statement on 17-5-1999 and other two have given their statement on 18-5-1999. They have narrated the alleged incidents of different dates. That on the basis of the said material, the respondent No. 1 - the District Magistrate, Jamnagar as the detaining authority has come to the conclusion that the petitioner / detenu is a bootlegger within the meaning of Section 2(b) of PASA. That enforcement of general provisions of law being insufficient to prevent the petitioner from continuing his prejudicial anti social activities, and as such, detention order under PASA is necessary and hence the impugned order is passed.

#. The petitioner has challenged the impugned order of detention on numerous grounds. It has been contended on behalf of the petitioner at bar that the representation made by the petitioner dated 16-12-1999 and communicated through Jail authority had not been responded to and / or considered expeditiously. Furthermore, the documents demanded and the translation of documents which ought to have supplied, have not been supplied to the petitioner, whereby, the constitutional mandate under Article 22(5) is violated and has rendered to continued the detention of the petitioner invalid.

#. Despite the service of rule, none of the respondents has filed affidavit to controvert the averments made in

the petition. The learned AGP Mr.K.T. Dave on instructions from the original file has stated that the representation dated 16-12-99 made by the petitioner was considered on 22-12-1999 and the communication of rejection was also made to the petitioner through jail. However, Mr.Dave, could not clarify the position as to whether the documents claimed by the petitioner through the said representation and the translation of the documents claimed by the petitioner were supplied to the petitioner or not. That in the absence of any affidavit to controvert the averments made in the petition, the contention raised on the basis of the allegation contained in amended para I(1) and I(2) have remained uncontroverted and as such, on facts it has to be decided that the respondents have failed to supply the necessary documents claimed by the petitioner and have also failed to supply the translation of the documents referred to and relied on in the grounds of detention.

#. In view of above stated facts and circumstances, the constitutional mandate under Article 22(5) having been violated, the impugned order could hardly be sustained.

#. As the petition succeeds on the aforesaid ground alone, it is not necessary to consider and decide the other contentions raised in the petition.

#. On the basis of the aforesaid discussion, the petition is allowed. The detention order dated 31-5-1999 passed by respondent No. 1 - The District Magistrate, Jamnagar against the petitioner is hereby quashed and set aside. The petitioner - HABIB @ BAPUDI ELIYAS SHAIKH is ordered to be set at liberty forthwith, if not required in any other case. Rule to the aforesaid extent is made absolute.

Date : 21-2-2000 [A.K.Trivedi, J.]

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